

Unrepresented Buyer? No Problem!



Before spending hundreds of thousands of dollars in what may be the largest purchase of their lifetime, many buyers seeking to purchase real estate, whether it be residential or commercial, choose to be represented by a REALTOR®. However, hiring the services of a REALTOR® is optional and some buyers choose to either represent themselves or retain the services of a real estate licensee or attorney who is not a REALTOR®. While this is 100% permissible, it can raise procedural questions for the listing agent who must interact with the buyer and their non-REALTOR® representative, if any.

First and foremost, listing agents that find themselves in this situation should keep in mind that they owe a duty of good faith and fair dealing to all parties, irrespective of whether the party is represented by a real estate professional. Absent a limited representation scenario, a broker under a listing agreement with a seller acts as the broker for the seller only and owes fiduciary duties of loyalty, obedience, disclosure, confidentiality, and accounting in dealings with the seller. But regardless of who the broker represents in the transaction, they must exercise reasonable skill and care in the performance of their duties and shall be truthful and honest in their dealings with all parties. This remains the case when the buyer is

unrepresented. To help explain these concurrent duties to the unrepresented buyer and confirm their exclusive agency to the seller, it would be best for the REALTOR® to provide the Unrepresented Buyer Disclosure to the Buyer.

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One procedural challenge faced by listing agents when dealing with buyers not represented by a REALTOR® is the contractual documents to be utilized in the transaction. Arizona REALTORS® forms are original works protected by federal copyright laws. These copyrighted forms are made available as a member benefit meaning that association members are authorized to use the forms when representing clients in their real estate transactions.

Since individuals that are not REALTORS® are prohibited from generating Arizona REALTORS® forms, purchase offers submitted by unrepresented buyers should not be made using an Arizona REALTORS® Residential Resale Real Estate Purchase Contract. Rather, the unrepresented buyer must procure their own purchase contract whether it be obtained from the internet, an attorney, or a title company. In these instances, listing agents must remember that Arizona law requires them to submit all offers to their seller unless they have written instructions to the contrary. A.A.C. R4-28-802(B) states in part:

“During the term of a listing agreement, a salesperson or broker shall promptly submit to the salesperson’s or broker’s client all offers to purchase or lease the listed property.”

So regardless of the purchase contract utilized by the prospective buyer, the listing agent is duty-bound to present the offer to their seller.

Arizona REALTORS® are accustomed to using the association’s forms in conjunction with their real estate transactions, including the Residential Resale Real Estate Purchase Contract. This is understandable considering that they have likely received education on the use of this specific contract which was drafted in an effort to be fair to both buyer and seller. However, use of the Arizona REALTORS® Purchase Contract is not legally required and the parties are free to contract using any form they deem best.



If a listing agent and their seller receive a purchase offer written on a form other than the Arizona REALTORS® Purchase Contract, it is recommended that the REALTOR® contact their designated broker for guidance. Depending on the complexity of the purchase offer, the REALTOR® may be able to note the differences for the seller to make an informed decision on how to proceed. It may also be appropriate for the seller to seek the advice of independent legal counsel and the listing agent should recommend that they do so when appropriate.

If the seller prefers the Arizona REALTORS® Purchase Contract, the listing agent should submit a counteroffer using that form. Although a non-REALTOR® is prohibited from generating an offer on an Arizona REALTORS® form, it does not mean that such a form cannot be used in the transaction. Provided the form is generated by the listing agent who is a REALTOR®, the use of Arizona REALTORS® forms in a transaction involving a buyer not represented by a REALTOR® is perfectly acceptable.

Ultimately, it is the job of the listing agent to procure a purchase offer acceptable to the seller and represent the seller's interests to the best of their ability. These obligations remain regardless of which transactional documents are utilized in the transaction and regardless of whether the buyer is represented by a REALTOR®.

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